

The Errors & Omissions Insurance Crisis in Ontario

The June 1995 edition of *The Commonwealth Lawyer*, the journal of the Commonwealth Lawyers Association, had an interesting article about a crisis that the lawyers of Ontario are now facing in regards to their insurance cover for 1995.

It seems the Ontario lawyers have been hit with a staggering increase in errors and omissions insurance premiums.

An 111-page document, "Report to Convocation of the Insurance Task Force and the Insurance Committee" which was tabled at the Law Society of Upper Canada Chronicles a series of errors and mismanagement.

Since 1990, the Law Society of Upper Canada has operated the Lawyers' Profession Indemnity Company (LPIC). All practising lawyers in Ontario (except those with in-house positions or in public service) are required to carry \$1,000,000 of errors and omissions insurance through LPIC. LPIC is fully owned by the Law Society.

The profession was originally told that, as of December 31, 1992, the E and O deficit stood at 23.8 million dollars. It turns out that this figure was seriously flawed. Various actuarial miscalculations failed to disclose an actual deficit of 98.6 million dollars. A number of other problems were identified which had resulted in the deficit increasing, by the end of 1994, to a projected total of 166 million dollars.

The report criticized the management structure of LPIC. Even though the Law Society had created an insurance company responsible for underwriting the primary one million dollar insurance policy, the management structure of the errors and omissions programme (which had previously been a department of the Law Society) had never changed.

LPIC had not collected data that an insurance company would be expected to have to manage its affairs professionally nor had its computer system been used to develop data on claims experience, an essential requirement to determine reliably a fair price for insurance.

The report concludes that the Law

Society should, for the time being, still have its own insurance programs. A number of lawyers' groups, however, argued that they should be able to purchase errors and omissions insurance on commercial terms in the open market.

The new errors and omissions insurance rates will undoubtedly impose a significant burden on new entrants to the profession as well as those running marginally profitable practices. Six hundred dollars of the approximately \$6,975 that the average lawyer will pay in 1995 will be in the form of a levy charged to every Ontario lawyer regardless of whether the lawyer requires insurance. The changes implemented for 1995 will include sur-

charges based on the number of transactions (a lawyer will pay an additional \$25 for each real estate and litigation file opened) and volume (there will be a surcharge for lawyers generating fees over \$150,000 per year). However, some groups of lawyers, particularly those in traditionally low-risk areas, are challenging the Law Society's right to levy an across-the-board increase in rates. Criminal lawyers, for instance, have challenged the present errors and omissions program as being contrary to Canada's Competition Act. Groups representing women lawyers felt that the new errors and omissions premiums will operate as an insurmountable hurdle to lawyers wishing to undertake part-time legal work.

These views were responded to by Law Society benchers who felt that it was time for the profession to bite the bullet. One bencher commented "the body is wounded se-

verely, it is gushing blood and needs instant surgery ... let's take the bullet in our teeth and crunch down and allow the surgery to take place, perhaps even without anaesthetic."

The report also noted that matters have not been helped by a huge increase in number of negligence claims against lawyers as well as an apparent increase in willingness on the part of courts to hold lawyers liable for their errors.

The premium notices went out to lawyers at the beginning of 1995. New lawyers called to the Bar this year will get a break by only having to pay half of the premium payable by other lawyers.

Nevertheless, it can be anticipated that the automatic suspension of members who have not paid their premiums will start in the spring. Just how many lawyers fall by the wayside remains to be seen.

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